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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CHISATO MOTOI et al., Plaintiffs and Respondents, v. RODOLFO CALDWELL, Defendant and Appellant.	B216221 (Los Angeles County Super. Ct. No. KC049699)

APPEAL from an order of the Superior Court of Los Angeles County, Robert A. Dukes, Judge. Affirmed.

John Hill & Associates and Greg T. Hill for Defendant and Appellant.

Law Offices of Tony M. Lu and Tony M. Lu for Plaintiffs and Respondents.

Rodolfo Caldwell appeals from the trial court's order denying his motion for relief from default and default judgment and motion to quash made on the ground he was not properly served with the complaint filed by Chisato Motoi and Alex Chang. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Default and Default Judgment*

According to Motoi, while she and Chang were having marital difficulties in June 2006, she moved into an apartment in Rowland Heights with Caldwell. At the time Caldwell was separated from his wife, who lived in their family residence in Corona. Motoi moved out of the Rowland Heights apartment in August 2006, but remained in contact with Caldwell. On November 23, 2006 Caldwell called Motoi from the airport and informed her "he was going to Hong Kong, Malaysia, some other Asian countries, and or the state of Washington. When [Motoi] asked him for his exact whereabouts, [Caldwell] informed [her she] should not be concerned about it. [Caldwell] indicated that he was not sure when he would return to the United States."

In December 2006 Caldwell sent Chang two emails containing sexually explicit language about Motoi and attaching photographs and video recordings of Motoi and Caldwell having sex, which were allegedly taken without Motoi's consent. On December 26, 2006 Motoi and Chang, separately represented by Richard J. McAndrew and Tony M. Lu respectively, filed a complaint against Caldwell asserting claims including negligence, intentional infliction of emotional distress, fraud and violation of their right to privacy.

According to a declaration filed by Lu, Motoi and Chang moved to serve Caldwell with the summons and complaint by publication in a Los Angeles newspaper after Lu had been unable to serve him personally or by mail. (The application for service by publication is not included in the record on appeal.) Lu stated, "Upon search, it was discovered that [Caldwell] no longer resided at the Rowland Heights Apartment. The only associated address my office was able to find was the Corona Address. [¶] . . . Our office directed the process server to the Corona Address. I have been informed that, upon arrival, [Caldwell] no longer resided at the address. I have been further informed that the residents did not know [Caldwell's] whereabouts and there was no forwarding address.

[¶] . . . Subsequently, I continued to search through Lexis and the telephone book, but I was unable to locate [Caldwell]. [¶] . . . I am informed that Mr. Richard J. McAndrew, Chisato Motoi's attorney, also engaged in similar efforts in locating [Caldwell]. I was informed that Mr. McAndrew could not locate [Caldwell's] whereabouts." The court granted the motion for service by publication on May 16, 2007.

Caldwell did not answer or otherwise respond to Motoi and Chang's complaint. On August 2, 2007 Caldwell's default was entered.

On September 25, 2007 Motoi and Chang filed an application for service of the statement of damages by publication. (This application is in the record.) In his declaration in support of the application, McAndrew described the efforts taken to serve Caldwell, which were similar to those taken by Lu several months earlier. The application states publication in the Los Angeles Bulletin was most likely to give Caldwell notice because the newspaper was distributed in the city where the tortious conduct occurred.

The case proceeded to default judgment; and notice of entry of default judgment was served, apparently by publication as well, on February 14, 2008.[1]

In April 2008 Caldwell sent Motoi an email stating, "I said 2 years I will be back. But right now I am not doing too good. That is why I need your help on the lawsuit to go away (cancell [*sic*]). That will help me get back on my feet. Please try want [*sic*] you can."

In November 2008 Lu was able to obtain an address for Caldwell's wife in Torrance. On November 21, 2008 Caldwell's wife was served with an application and order for appearance and examination for Caldwell. According to Caldwell, this was the first time he became aware of the default and default judgment.

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1 The record does not include the default judgment or the notice of entry of default judgment. At the hearing on Caldwell's motion for relief, however, Caldwell's counsel indicated the notice of entry had been served by publication.

2. *The Trial Court's Denial of Caldwell's Motion for Relief*

On February 20, 2009 Caldwell moved for relief from default and default judgment and to quash service of the summons and complaint on the ground Motoi and Chang knew Caldwell was overseas when they attempted to serve the complaint and thus knew service by publication in a Los Angeles newspaper was not likely to provide him with actual notice. Caldwell—contending "Motoi kept in constant email contact" and all communication was "friendly and affectionate"— also argued Motoi was either required to ask where he lived so he could be personally served, ask whether he would accept service by mail or follow the procedures set forth in Code of Civil Procedure sections 413.10, subdivision (c), for serving a defendant who is out of the country.[2] The court denied the motions, finding the motion for relief was untimely because it was filed more than 180 days after notice of entry of the default judgment was served.[3] The court also found both motions were without merit because all means of personal service had been exhausted.

DISCUSSION

Although there is no time limit to attack a judgment void on its face (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19), a judgment is void on its face only when the record affirmatively shows the court was without jurisdiction to render the judgment. (*Canadian & American Mortgage & Trust Co. v. Clarita Land & Invest. Co.* (1903) 140 Cal. 672, 674; *Rochin v. Pat Johnson Mfg. Co.* (1998) 67 Cal.App.4th 1228, 1239.) When a judgment is valid on its face but void due to improper service, the deadline for moving for relief under section 473, subdivision (d), is the same as the deadline for moving for relief under section 473.5 subdivision (a), for lack of notice. (See *Rogers v. Silverman* (1989) 216 Cal.App.3d

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2 Statutory references are to the Code of Civil Procedure.

3 In finding Caldwell's motion for relief filed on February 20, 2009 was untimely, the trial court took judicial notice "of Notice of Entry of Default Judgment, filed on 2-27-08, which shows that the notice was served on 2-14-08."

1114, 1116, 1124 [process server served wrong person]; *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 301, fn. 3.) Section 473.5, subdivision (a), provides: "The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered."

Caldwell does not contest the facial validity of service of process, thus the 180-day time limit for filing a motion for relief is applicable. Moreover, in his appeal Caldwell does not challenge the trial court's finding, presumed to be correct (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 ["judgment of or order of lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness"]), he failed to timely file his motion for relief within 180 days of service of the notice of entry of default judgment.[4] Thus, Caldwell has forfeited any argument the trial court erred in denying his motion on the ground it was not timely filed. (See *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 ["'[t]his court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record'"]; see also *People v. Stanley* (1995) 10 Cal.4th 764, 793 ["'[E]very [appellate] brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.'"]; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546 [it is not the proper function of Court of Appeal to search the record on behalf of appellants or to serve as "backup appellate counsel"].)

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4 Although Caldwell acknowledged in his opening brief that the trial court had ruled his motion for relief from the default judgment was untimely, his argument focuses exclusively on the court's alternate ground for denying his motion—that service of the summons and complaint was, in fact, proper. In their respondents' brief Motoi and Chang address both bases for the trial court's decision to deny Caldwell's motion. Nonetheless, in his reply brief Caldwell once again omits any reference to the trial court's ruling his motion was untimely.

DISPOSITION

The order is affirmed. Motoi and Chang are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J.

SEGAL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.